

**U.S. District Court
Southern District of New York (Foley Square)
CIVIL DOCKET FOR CASE #: 1:17-cv-05928-JMF**

Natural Resources Defense Council v. U.S. Environmental
Protection Agency
Assigned to: Judge Jesse M. Furman
Cause: 05:552 Freedom of Information Act

Date Filed: 08/04/2017
Jury Demand: None
Nature of Suit: 895 Freedom of
Information Act
Jurisdiction: U.S. Government Defendant

Plaintiff

Natural Resources Defense Council

represented by **David C. Vladeck**
Georgetown University Law Center
600 New Jersey Ave., Nw
Washington, DC 20001
202-662-9540
Fax: 202-662-6934
Email: vladeckd@law.georgetown.edu
LEAD ATTORNEY

Stephanie Kaufman Glaberson
Georgetown University Law Center
600 New Jersey Ave., Nw
Washington, DC 20001
(914)-588-2844
Email: skg43@georgetown.edu
ATTORNEY TO BE NOTICED

Vivian Huei-Wen Wang
Natural Resources Defense Council, Inc.
40 West 20th Street
New York, NY 10011
(212)-727-4417
Fax: (212)-727-1773
Email: vwang@nrdc.org
ATTORNEY TO BE NOTICED

V.

Defendant

U.S. Environmental Protection Agency

represented by **Tomoko Onozawa**
U.S. Attorney's Office, SDNY (Chambers
Street)
86 Chambers Street
New York, NY 10007
(212) 637-2721
Fax: (212) 637- 2686
Email: tomoko.onozawa@usdoj.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
08/04/2017	<u>1</u>	COMPLAINT against U.S. Environmental Protection Agency. (Filing Fee \$ 400.00, Receipt Number 0208-13982905) Document filed by Natural Resources Defense Council. (Attachments: # <u>1</u> Exhibit A)(Wang, Vivian) (Entered: 08/04/2017)
08/04/2017	<u>2</u>	CIVIL COVER SHEET filed. (Wang, Vivian) (Entered: 08/04/2017)

08/04/2017	<u>3</u>	REQUEST FOR ISSUANCE OF SUMMONS as to U.S. Environmental Protection Agency, re: <u>1</u> Complaint. Document filed by Natural Resources Defense Council. (Wang, Vivian) (Entered: 08/04/2017)
08/04/2017	<u>4</u>	RULE 7.1 CORPORATE DISCLOSURE STATEMENT. No Corporate Parent. Document filed by Natural Resources Defense Council.(Wang, Vivian) (Entered: 08/04/2017)
08/07/2017		CASE OPENING INITIAL ASSIGNMENT NOTICE: The above-entitled action is assigned to Judge Jesse M. Furman. Please download and review the Individual Practices of the assigned District Judge, located at http://nysd.uscourts.gov/judges/District . Attorneys are responsible for providing courtesy copies to judges where their Individual Practices require such. Please download and review the ECF Rules and Instructions, located at http://nysd.uscourts.gov/ecf_filing.php . (kl) (Entered: 08/07/2017)
08/07/2017		Magistrate Judge Katharine H. Parker is so designated. Pursuant to 28 U.S.C. Section 636(c) and Fed. R. Civ. P. 73(b)(1) parties are notified that they may consent to proceed before a United States Magistrate Judge. Parties who wish to consent may access the necessary form at the following link: http://nysd.uscourts.gov/forms.php . (kl) (Entered: 08/07/2017)
08/07/2017		Case Designated ECF. (kl) (Entered: 08/07/2017)
08/07/2017	<u>5</u>	ELECTRONIC SUMMONS ISSUED as to U.S. Environmental Protection Agency. (kl) (Entered: 08/07/2017)
08/08/2017	<u>6</u>	NOTICE OF INITIAL PRETRIAL CONFERENCE: Counsel are directed to confer with each other prior to the conference regarding settlement and each of the other subjects to be considered at a Federal Rule of Civil Procedure 16 conference. Additionally, in accordance with Paragraph 2.B of the Court's Individual Rules and Practices, which are available at http://nysd.uscourts.gov/judge/Furman , the parties are hereby ORDERED to file on ECF a joint letter, described below, as well as a proposed Civil Case Management Plan and Scheduling Order attached as an exhibit to the joint letter, no later than Thursday of the week prior to the initial pretrial conference. The parties shall use this Court's form Proposed Civil Case Management Plan and Scheduling Order, which is also available at http://nysd.uscourts.gov/judge/Furman . Any open legal issues can be addressed at the conference as set forth in this order. Initial Conference set for 10/25/2017 at 04:30 PM in Courtroom 1105, 40 Centre Street, New York, NY 10007 before Judge Jesse M. Furman. (Signed by Judge Jesse M. Furman on 8/8/2017) (rj) (Entered: 08/08/2017)
08/23/2017	<u>7</u>	NOTICE OF APPEARANCE by David C. Vladeck on behalf of Natural Resources Defense Council. (Vladeck, David) (Entered: 08/23/2017)
08/23/2017	<u>8</u>	NOTICE OF CHANGE OF ADDRESS by David C. Vladeck on behalf of Natural Resources Defense Council. New Address: Georgetown University Law Center, 600 New Jersey Avenue, NW, Washington, DC, USA 20001, 202-662-9540. (Vladeck, David) (Entered: 08/23/2017)
09/06/2017	<u>9</u>	LETTER MOTION for Extension of Time to File Answer to <i>Complaint</i> addressed to Judge Jesse M. Furman from AUSA Tomoko Onozawa dated 9/6/2017. Document filed by U.S. Environmental Protection Agency.(Onozawa, Tomoko) (Entered: 09/06/2017)
09/06/2017	10	ORDER granting <u>9</u> Letter Motion for Extension of Time to Answer. The answer deadline is extended to September 29, 2017. (HEREBY ORDERED by Judge Jesse M. Furman)(Text Only Order) (Furman, Jesse) (Entered: 09/06/2017)
09/22/2017	<u>11</u>	AFFIDAVIT OF SERVICE. U.S. Environmental Protection Agency served on 8/7/2017, answer due 9/29/2017. Service was made by Mail. Document filed by Natural Resources Defense Council. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C)(Wang, Vivian) (Entered: 09/22/2017)
09/29/2017	<u>12</u>	ANSWER to <u>1</u> Complaint. Document filed by U.S. Environmental Protection Agency.(Onozawa, Tomoko) (Entered: 09/29/2017)

10/12/2017	<u>13</u>	NOTICE OF APPEARANCE by Stephanie Kaufman Glaberson on behalf of Natural Resources Defense Council. (Glaberson, Stephanie) (Entered: 10/12/2017)
10/18/2017	<u>14</u>	LETTER MOTION to Adjourn Conference addressed to Judge Jesse M. Furman from AUSA Tomoko Onozawa dated 10/18/2017. Document filed by U.S. Environmental Protection Agency.(Onozawa, Tomoko) (Entered: 10/18/2017)
10/18/2017	15	ORDER granting <u>14</u> Letter Motion to Adjourn Conference. The initial pretrial conference is ADJOURNED to NOVEMBER 2, 2017, at 3:15 p.m. (HEREBY ORDERED by Judge Jesse M. Furman)(Text Only Order) (Furman, Jesse) (Entered: 10/18/2017)
10/26/2017	<u>16</u>	INITIAL REPORT OF PARTIES BEFORE PRETRIAL CONFERENCE. Document filed by Natural Resources Defense Council.(Glaberson, Stephanie) (Entered: 10/26/2017)
11/02/2017		Minute Entry for proceedings held before Judge Jesse M. Furman: Initial Pretrial Conference held on 11/2/2017. Stephanie Glaberson and Vivian Wang present for Plaintiff. Tomoko Onozawa present for Defendant. (ab) (Entered: 11/30/2017)
11/20/2017	<u>17</u>	STATUS REPORT. <i>Joint status letter</i> Document filed by U.S. Environmental Protection Agency.(Onozawa, Tomoko) (Entered: 11/20/2017)
11/21/2017	<u>18</u>	MEMO ENDORSEMENT on re: <u>17</u> Status Report filed by U.S. Environmental Protection Agency. ENDORSEMENT: SO ORDERED. (Signed by Judge Jesse M. Furman on 11/21/2017) (ras) (Entered: 11/21/2017)
11/29/2017	<u>19</u>	STATUS REPORT. Document filed by U.S. Environmental Protection Agency.(Onozawa, Tomoko) (Entered: 11/29/2017)
11/30/2017	<u>20</u>	MEMO ENDORSEMENT on re: <u>19</u> Status Report filed by U.S. Environmental Protection Agency. ENDORSEMENT: The parties' agreement is hereby SO ORDERED. The parties shall submit a joint status letter no later than two months from the date of this Order. In that letter, the parties should advise the Court if there is any need to hold a conference. If the parties believe that there is a need to hold a conference sooner, they should file a letter motion to that effect. SO ORDERED. (Signed by Judge Jesse M. Furman on 11/30/2017) (ras) (Entered: 11/30/2017)
01/30/2018	<u>21</u>	STATUS REPORT. Document filed by U.S. Environmental Protection Agency.(Onozawa, Tomoko) (Entered: 01/30/2018)
01/30/2018	22	ORDER re: <u>21</u> Status Report filed by U.S. Environmental Protection Agency. The parties shall submit another joint status letter no later than two months from the date of this Order. In that letter, the parties should again advise the Court if there is any need to hold a conference. If the parties believe that there is a need to hold a conference sooner, they should file a letter motion to that effect. SO ORDERED. (Signed by Judge Jesse M. Furman on 1/30/2018) (Text Only Order) (Furman, Jesse) (Entered: 01/30/2018)
02/23/2018	<u>23</u>	LETTER MOTION for Extension of Time <i>for EPA's third FOIA production</i> addressed to Judge Jesse M. Furman from AUSA Tomoko Onozawa dated 2/23/2018. Document filed by U.S. Environmental Protection Agency.(Onozawa, Tomoko) (Entered: 02/23/2018)
02/25/2018	24	ORDER granting <u>23</u> Letter Motion for Extension of Time. The third production deadline is extended to March 5, 2018. (HEREBY ORDERED by Judge Jesse M. Furman)(Text Only Order) (Furman, Jesse) (Entered: 02/25/2018)
03/29/2018	<u>25</u>	STATUS REPORT. Document filed by U.S. Environmental Protection Agency.(Onozawa, Tomoko) (Entered: 03/29/2018)
03/30/2018	26	ORDER re: <u>25</u> Status Report filed by U.S. Environmental Protection Agency. The parties shall file a joint status report by May 30, 2018. SO ORDERED. (Signed by Judge Jesse M. Furman on 3/30/2018) (Text Only Order)(Furman, Jesse) (Entered: 03/30/2018)
05/30/2018	<u>27</u>	STATUS REPORT. Document filed by Natural Resources Defense Council.(Glaberson, Stephanie) (Entered: 05/30/2018)

05/31/2018	<u>28</u>	ORDER re: <u>27</u> Status Report filed by Natural Resources Defense Council. The parties shall file a joint status report and proposed briefing schedule for summary judgment by July 11, 2018. SO ORDERED. (Signed by Judge Jesse M. Furman on 5/31/2018) (Text Only Order) (Furman, Jesse) (Entered: 05/31/2018)
07/11/2018	<u>29</u>	STATUS REPORT. <i>and proposed briefing schedule for cross-motions for summary judgment</i> Document filed by U.S. Environmental Protection Agency.(Onozawa, Tomoko) (Entered: 07/11/2018)
07/16/2018	<u>30</u>	MEMO ENDORSEMENT on re: <u>29</u> Status Report filed by U.S. Environmental Protection Agency. ENDORSEMENT: The parties' proposed briefing scheduled is hereby ADOPTED. (Cross Motions due by 11/5/2018., Motions due by 10/1/2018. Responses due by 11/19/2018, Replies due by 12/3/2018.) (Signed by Judge Jesse M. Furman on 7/16/2018) (tro) (Entered: 07/16/2018)
09/26/2018	<u>31</u>	LETTER MOTION for Extension of Time to File <i>Cross Motions for Summary Judgment</i> addressed to Judge Jesse M. Furman from AUSA Tomoko Onozawa dated 9/26/2018. Document filed by U.S. Environmental Protection Agency.(Onozawa, Tomoko) (Entered: 09/26/2018)
09/26/2018	<u>32</u>	ORDER granting <u>31</u> Letter Motion for Extension of Time. The parties' proposed briefing schedule is adopted. EPA's motion for summary judgment, including its Vaughn index, shall be filed by October 16, 2018. NRDC's opposition and cross-motion for summary judgment shall be filed by November 16, 2018. EPA's opposition to NRDC's cross-motion and any reply in further support of its summary judgment motion shall be filed by November 30, 2018. Any reply in further support of NRDC's cross-motion for summary judgment shall be filed by December 14, 2018. (HEREBY ORDERED by Judge Jesse M. Furman)(Text Only Order) (Furman, Jesse) (Entered: 09/26/2018)
09/26/2018	<u>33</u>	AMENDED LETTER MOTION for Extension of Time to File <i>Cross-Motions for Summary Judgment</i> addressed to Judge Jesse M. Furman from AUSA Tomoko Onozawa dated 9/26/2018. Document filed by U.S. Environmental Protection Agency.(Onozawa, Tomoko) (Entered: 09/26/2018)
09/26/2018	<u>34</u>	ORDER granting <u>33</u> Letter Motion for Extension of Time. The parties' AMENDED proposed briefing schedule is adopted. EPA's motion for summary judgment, including its Vaughn index, shall be filed by October 16, 2018. NRDC's opposition and cross-motion for summary judgment shall be filed by November 19, 2018. EPA's opposition to NRDC's cross-motion and any reply in further support of its summary judgment motion shall be filed by December 3, 2018. Any reply in further support of NRDC's cross-motion for summary judgment shall be filed by December 17, 2018. (HEREBY ORDERED by Judge Jesse M. Furman)(Text Only Order) (Furman, Jesse) (Entered: 09/26/2018)
10/16/2018	<u>35</u>	MOTION for Summary Judgment . Document filed by U.S. Environmental Protection Agency. Responses due by 11/19/2018(Onozawa, Tomoko) (Entered: 10/16/2018)
10/16/2018	<u>36</u>	DECLARATION of Pamela S. Myrick in Support re: <u>35</u> MOTION for Summary Judgment .. Document filed by U.S. Environmental Protection Agency. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2, # <u>3</u> Exhibit 3, # <u>4</u> Exhibit 4, # <u>5</u> Exhibit 5, # <u>6</u> Exhibit 6, # <u>7</u> Exhibit 7, # <u>8</u> Exhibit 8, # <u>2</u> Exhibit 9, # <u>10</u> Exhibit 10, # <u>11</u> Exhibit 11, # <u>12</u> Exhibit 12)(Onozawa, Tomoko) (Entered: 10/16/2018)
10/16/2018	<u>37</u>	MEMORANDUM OF LAW in Support re: <u>35</u> MOTION for Summary Judgment . . Document filed by U.S. Environmental Protection Agency. (Onozawa, Tomoko) (Entered: 10/16/2018)
11/09/2018	<u>38</u>	LETTER MOTION for Extension of Time to File <i>Opposition and cross-motion for summary judgment</i> addressed to Judge Jesse M. Furman from Stephanie Glaberson dated November 9, 2018. Document filed by Natural Resources Defense Council.(Glaberson, Stephanie) (Entered: 11/09/2018)
11/11/2018	<u>39</u>	ORDER granting <u>38</u> Letter Motion for Extension of Time to File Motion Papers. The parties' proposed modified briefing schedule is hereby adopted. Accordingly, NRDC shall file its opposition and cross-motion for summary judgment by December 21, 2018; the EPA shall file its opposition to NRDC's cross-motion and its reply in further support of its summary judgment motion by January 18, 2019; and NRDC shall file

		any reply in further support of its cross-motion for summary judgment by February 1, 2019. (HEREBY ORDERED by Judge Jesse M. Furman)(Text Only Order) (Furman, Jesse) (Entered: 11/11/2018)
12/21/2018	<u>40</u>	MEMORANDUM OF LAW in Opposition re: <u>35</u> MOTION for Summary Judgment . . Document filed by Natural Resources Defense Council. (Attachments: # <u>1</u> Appendix)(Glaberson, Stephanie) (Entered: 12/21/2018)
12/21/2018	<u>41</u>	DECLARATION of Sarah Tallman in Opposition re: <u>35</u> MOTION for Summary Judgment .. Document filed by Natural Resources Defense Council. (Attachments: # <u>1</u> Exhibit May 17, 2017 Confirmation, # <u>2</u> Exhibit August 29, 2017 Interim Release, # <u>3</u> Exhibit April 30, 2017 Communication, # <u>4</u> Exhibit EPA Withheld in Full Index)(Glaberson, Stephanie) (Entered: 12/21/2018)
12/27/2018	<u>42</u>	STANDING ORDER M10-468: The United States Attorney's Office shall notify the Court immediately upon the restoration of Department of Justice funding. (As further set forth in this Order.) (Signed by Judge Colleen McMahon on 12/27/2018) (mro) (Entered: 01/02/2019)
12/27/2018		Case Stayed (mro) (Entered: 01/14/2019)
02/20/2019	<u>43</u>	LETTER MOTION for Extension of Time to File Response/Reply addressed to Judge Jesse M. Furman from AUSA Tomoko Onozawa dated 2/20/2019. Document filed by U.S. Environmental Protection Agency.(Onozawa, Tomoko) (Entered: 02/20/2019)
02/20/2019	44	ORDER granting <u>43</u> Letter Motion for Extension of Time to File Response/Reply. The deadline for the filing of EPA's reply brief is hereby EXTENDED to March 14, 2019. The reply brief may be up to 15 pages long. NRDC may file a sur-reply and if it does so, must file it by April 4, 2019. (HEREBY ORDERED by Judge Jesse M. Furman)(Text Only Order) (Furman, Jesse) (Entered: 02/20/2019)
03/11/2019	<u>45</u>	ORDER REGARDING SUBMISSION OF ELECTRONIC COURTESY COPIES: With respect to Defendant's Motion for Summary Judgment, the parties shall adhere to the following procedure for the submission of electronic courtesy copies (which are to be filed in addition to, rather than in place of, paper courtesy copies). No later than two business days after the final filing, the moving party shall submit electronic courtesy copies of all motion papers in electronic folders titled with the docket number of the relevant motion in brackets followed by a description of the motion (e.g., " <u>35</u> Defendant's Motion for Summary Judgment"). As further set forth in this order. SO ORDERED. (Signed by Judge Jesse M. Furman on 3/11/2019) (ks) (Entered: 03/11/2019)
03/14/2019	<u>46</u>	REPLY MEMORANDUM OF LAW in Support re: <u>35</u> MOTION for Summary Judgment . . Document filed by U.S. Environmental Protection Agency. (Onozawa, Tomoko) (Entered: 03/14/2019)
03/14/2019	<u>47</u>	DECLARATION of Pamela S. Myrick in Support re: <u>35</u> MOTION for Summary Judgment .. Document filed by U.S. Environmental Protection Agency. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2)(Onozawa, Tomoko) (Entered: 03/14/2019)
03/14/2019	<u>48</u>	DECLARATION of Tomoko Onozawa in Support re: <u>35</u> MOTION for Summary Judgment .. Document filed by U.S. Environmental Protection Agency. (Attachments: # <u>1</u> Exhibit 1)(Onozawa, Tomoko) (Entered: 03/14/2019)
04/04/2019	<u>49</u>	REPLY MEMORANDUM OF LAW in Support re: <u>35</u> MOTION for Summary Judgment . . Document filed by Natural Resources Defense Council. (Attachments: # <u>1</u> Exhibit Ex. A: EPA Letter in 18-cv-0794)(Glaberson, Stephanie) (Entered: 04/04/2019)
04/04/2019	<u>50</u>	DECLARATION of Stephanie Glaberson in Opposition re: <u>35</u> MOTION for Summary Judgment .. Document filed by Natural Resources Defense Council. (Attachments: # <u>1</u> Exhibit 1: March 5, 2018 Email Exchange, # <u>2</u> Exhibit 2: July 11, 2018 Email Exchange, # <u>3</u> Exhibit 3: EPA Amended Draft of Joint Letter, # <u>4</u> Exhibit 4: NRDC Markup of Joint Letter Draft)(Glaberson, Stephanie) (Entered: 04/04/2019)
04/08/2019	<u>51</u>	FILING ERROR – WRONG EVENT TYPE SELECTED FROM MENU – MOTION to Strike Document No. [49–50] . Document filed by U.S. Environmental Protection Agency.(Onozawa, Tomoko) Modified on 5/24/2019 (Idi). (Entered: 04/08/2019)

		04/08/2019)
04/09/2019	<u>52</u>	ORDER denying <u>51</u> Motion to Strike. The Court will consider the sur-reply only to the extent that it actually addresses issues raised for the first time in Defendant;s reply brief. Accordingly, Defendant's motion to strike the sur-reply and alternative request for leave to file a sur-sur-reply are both DENIED. (HEREBY ORDERED by Judge Jesse M. Furman)(Text Only Order) (Furman, Jesse) (Entered: 04/09/2019)
07/25/2019	<u>53</u>	MEMORANDUM OPINION AND ORDER: For the foregoing reasons, the EPA is ORDERED to submit (1) no later than August 8, 2019, a revised affidavit and/or Vaughn index that describes with more specificity the reasonably foreseeable harms to Exemption 5-related interests that disclosure of the challenged documents would cause; and (2) no later than July 30, 2019, copies of the records listed above (in both hard copy and by email) for the Court's in camera inspection. SO ORDERED. (Signed by Judge Jesse M. Furman on 7/25/2019) (ama) (Entered: 07/25/2019)
08/06/2019	<u>54</u>	LETTER MOTION for Extension of Time to File <i>Supplemental Vaughn Affidavit and/or Vaughn Index</i> addressed to Judge Jesse M. Furman from AUSA Tomoko Onozawa dated 8/6/2019. Document filed by U.S. Environmental Protection Agency.(Onozawa, Tomoko) (Entered: 08/06/2019)
08/06/2019	55	ORDER granting <u>54</u> Letter Motion for Extension of Time to File. Defendants deadline to submit a supplemental affidavit and/or Vaughn index is hereby EXTENDED to August 16, 2019. (HEREBY ORDERED by Judge Jesse M. Furman)(Text Only Order) (Furman, Jesse) (Entered: 08/06/2019)
08/16/2019	<u>56</u>	DECLARATION of Pamela S. Myrick (Second Supplemental Declaration) in Support re: <u>35</u> MOTION for Summary Judgment .. Document filed by U.S. Environmental Protection Agency. (Onozawa, Tomoko) (Entered: 08/16/2019)
08/30/2019	<u>57</u>	OPINION AND ORDER re: <u>35</u> MOTION for Summary Judgment filed by U.S. Environmental Protection Agency. Summary judgment is GRANTED to the EPA on those issues and as to those records. By contrast, and as described throughout this Opinion, the agency failed to justify its decision not to disclose the remaining records. For those records, summary judgment is DENIED. Finally, summary judgment is DENIED on the agency's segregability claims. In light of this Opinion and Order and the claims that remain, the parties shall meet and confer to discuss (1) how the litigation should proceed from here and (2) how this Opinion and Order applies to the records not addressed by the Vaughn index. No later than September 20, 2019, the parties shall file letter-briefs, not to exceed four single-spaced pages, stating their views on those issues – mindful of the Court's desire to minimize further proceedings and the scope of any further judicial review. Finally, the parties shall appear for a conference before the Court on October 3, 2019, at 4:30 p.m. to discuss their views on how to proceed. The Clerk of Court is directed to terminate Docket No. 35. (Status Conference set for 10/3/2019 at 04:30 PM before Judge Jesse M. Furman.) (Signed by Judge Jesse M. Furman on 8/30/2019) (ne) (Entered: 08/30/2019)